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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,212	09/26/2003	Kimio Nakayama	243095US0	6831

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/670,212	NAKAYAMA ET AL.	
	Examiner	Art Unit	
	Matthew D. Matzek	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election with traverse of artificial leather, claims 1-12 in the reply filed on 5/27/2005, is acknowledged. The traversal is on the ground(s) that the Examiner has not evidenced that the claimed artificial leather can be made via another materially different process. This is not found persuasive because Examiner has offered a materially different process in the previous Office Action through the omission of a step recited in claim 13. In addition, Examiner offers the process of making the artificial leather by taking the individual strands that are to be used to make the nonwoven fabric and coating them with the elastomeric polymer with pigment B and then forming the fibers into the fabric. The article would be formed with subsequent thermal lamination.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 13-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/27/2005.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to Examiner if Pigment B of elastomeric polymer A is to be selected from two pigments (1. organic and carbon black pigments 2. organic pigment), or between three pigments (1. organic pigment, 2. carbon black, 3. pigment containing an organic pigment).

Art Unit: 1771

4. Claims 5, 6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims supra recite physical properties, but fail to set forth what provides for said properties. Ex parte Slob, 157 USPQ states the following with regard to an article claimed by defining property values:

Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions, which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired characteristics, thus, expression "a liquefiable substance having a liquification temperature from 40°C to about 300°C and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and in effect, recites compositions by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

Claim Rejections - 35 USC § 103

5. Claims 1-3, and 5-12 are rejected under 35 U.S.C. 103(a) as being obvious over Nobuto et al. (US 2003/0232555) in view of Yoneda et al. (US 6,733,859) and further view of Yoon et al. (US 6,838,172).

- a. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by:
- (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another";
 - (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or
 - (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference

are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

b. Nobuto et al. teach an artificial leather comprising a nonwoven fabric of fibers having a fineness of 0.5 dtex or less and an elastomer (Abstract). The nonwoven fabric may preferably contain about 0.5 to 8% by mass carbon black [0047]. The elastomeric polymer may contain up to 7% by mass carbon black [0067]. The ratio of the elastomeric polymer to the nonwoven fabric is 5:95 to 70:30 by mass [0068]. Fibers of 0.2 dtex were used for in Example 1 and the surface of the article has been buffed to yield naps of a length to successfully prepare an artificial, suede leather [0161]. Claim 10 is rejected as the artificial leather article of Nobuto et al. may be lined with a woven or knitted fabric [0006].

c. Claims 9, 11 and 12 are rejected as the article of Nobuto et al. may be coated with elastomeric polymer to create a grained, artificial leather [0122 and 0123].

d. Claim 7 is rejected as the size of the elastomeric polymer A particle can not serve as a further limitation in the instantly claimed article as the elastomer melts and impregnates the nonwoven fabric and therefore loses its particle form in the fabricated article.

e. The particle size of the carbon black and the length of the raised naps have not been taught by Nobuto et al.

Art Unit: 1771

- f. Yoneda et al. teach the creation of a napped leather-like sheet comprising an entangled nonwoven fabric composed of ultrafine fibers and an elastomer (Abstract). A mean nap length of 50 μ m to 2,000 μ m is preferred and with a nap length of less than 50 μ m it is difficult to have a suede-like appearance (col. 4, lines 29-36).
- g. Yoon et al. teach a dope dyed sea-island type conjugate multifilament comprising carbon black that may be used to make suede-like articles (Abstract and col. 2, lines 45-53). Claim 10 recites that the average particle diameter of the carbon black is to be 0.001 μ m to 0.55 μ m.
- h. Since Nobuto et al., Yoneda et al., and Yoon et al. are all from the same field of endeavor, artificial suede leather, the purposes disclosed by Yoneda et al. and Yoon et al. would have been recognized in the pertinent art of Nobuto et al.
- i. It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the artificial leather of Nobuto et al. with the nap length of Yoneda et al. and the carbon black size of Yoon et al. The skilled artisan would have been motivated by the desire to create an article that successfully mimics the desired dyed suede-like appearance (Yoneda et al. col. 4, lines 29-40 and Yoon et al. col.4, lines 1-4).
6. Claim 4 is rejected under 35 U.S.C. 103(a) as being obvious over Nobuto et al. in view of Yoneda et al. and Yoon et al. as applied above and in further view of Zinke et al. (US 5,969,015). The previously applied art is silent as to the use of polycyclic organic or insoluble azo pigments.
- a. Zinke et al. teach a composition for the prevention of degradation of polymeric materials comprising elastomers, and pigments for use in artificial leather (col. 1, lines 5-

Art Unit: 1771

25 and col. 19, lines 5-26). The pigments available for use in the artificial leather composition include carbon black and azo pigments (col. 17, line 66 – col. 18, lines 5).

b. Since Nobuto et al., Yoneda et al., Yoon et al. and Zinke et al. are all from the same field of endeavor, artificial leather, the purpose disclosed by Zinke et al. would have been recognized in the pertinent art of Nobuto et al.

c. It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the artificial leather of Nobuto et al. with azo pigments. The skilled artisan would have been motivated by the desire to create an article that successfully mimics the desired dyed artificial appearance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

MDM

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER